

Introduced by Senator Polanco

December 4, 2000

An act to add and repeal Article 19 (commencing with Section 1115) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, and to add and repeal Sections 12211, 12422.1, 12428.1, and 12632.1 of the Revenue and Taxation Code, relating to financial investments.

LEGISLATIVE COUNSEL'S DIGEST

SB 24, as introduced, Polanco. Financial investments.

Existing law governing insurance prescribes certain authorized investments that can be made by insurers.

This bill would enact, until January 1, 2013, the California Certified Capital Company Act to establish an incentive program, using credits against gross premium taxes, for insurance companies to invest in certified capital companies in this state, which in turn would make investments in new or expanding businesses. This increase in investment capital flowing into new or expanding businesses is intended to contribute to employment growth and to expand and diversify the state's economic base.

Existing insurance tax law requires every insurer, as defined, doing business in this state, to annually pay a tax on gross premiums, as specified, at the rates provided by law. Except as otherwise provided, the rate of tax to be applied to the basis of the annual tax in respect to each year is 2.35%. Existing law authorizes various credits against that tax.

This bill would allow until January 1, 2013, as a credit against that tax 100% of the amount invested by an insurer in a certified capital company pursuant to the Certified Capital Company Investment Act, subject to specified conditions and ceilings on credit amount.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) According to the Milken Institute, the following conditions
4 characterize the availability of business financing in California:

5 (1) Growth in California's entrepreneurial business is
6 constrained by the lack of venture capital funding resulting in
7 limited employment growth in these businesses.

8 (2) Businesses located in the silicon valley captured 80 percent
9 of the 17 billion dollars in venture capital funds that were secured
10 by California business in 1999.

11 (3) Of the 95 billion dollars available in the private equity
12 market in 1999, only 2 billion dollars are managed by investment
13 firms that supply capital to new entrepreneurs in traditionally
14 underserved markets.

15 (4) While 40 percent of California's small firms are owned by
16 women, less than 10 percent of early stage venture capital funds
17 and 1 percent of the total amount of private equity funding go
18 directly to these firms.

19 (5) The average venture capital-backed company employs
20 nearly 100 workers within five years of its establishment, creating
21 almost twice as many jobs as equivalent companies that are not
22 venture-backed.

23 (b) According to the California Research Bureau, in an April,
24 1998 report, "Business Capital Needs in California: Designing a
25 Program," California has a large number of rapidly growing firms,
26 distributed across many industries throughout the state that require
27 early stage capital in order to grow.

28 (c) It is the intent of this act to provide incentives to the private
29 sector that will increase access to venture capital by California's
30 small business communities that are located in geographically
31 diverse and underserved regions.

32 SEC. 2. Article 19 (commencing with Section 1115) is added
33 to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:
34



Article 19. California Certified Capital Company Act

1115. This article may be known and may be cited as the Certified Capital Company Act.

1116. The primary purpose of this article is to direct venture capital to markets, communities, and businesses that have not been adequately served by the venture capital community. This article is intended to stimulate a substantial increase in venture capital investments in this state by providing an incentive for insurance companies to invest in certified capital companies, which, in turn, will make investments in new businesses or expanding businesses. The increase in investment capital flowing into new or expanding businesses is intended to contribute to employment growth, in particular, by creating jobs that exceed the average wage for the county in which the jobs are created, and to expand or diversify the economic base of this state.

1117. As used in this article:

(a) “Affiliate of an insurer” means:

(1) Any person who directly or indirectly beneficially owns, whether through rights, options, convertible interests, or otherwise controls or holds power to vote 10 percent or more of the outstanding voting securities or other ownership interests of an insurer.

(2) Any person whose outstanding voting securities or other ownership interest of 10 percent or more is directly or indirectly beneficially owned, whether through rights, options, convertible interests, or otherwise, controlled or held with power to vote by an insurer.

(3) Any person who directly or indirectly controls, is controlled by, or is under common control of an insurer.

(4) A partnership in which an insurer is a general partner.

(5) Any person who is a principal, director, employee, or agent of an insurer or an immediate family member of that principal, director, employee, or agent.

(b) “Certified capital” means an investment of cash by a certified investor in a certified capital company that fully funds the purchase price of either or both its equity interest in, or a qualified debt instrument issued by, the certified capital company.

(c) “Certified capital company” means a corporation, partnership, or limited liability company that:

1 (1) Is certified by the Treasurer and regulated by the
2 department in accordance with this article.

3 (2) Receives investments of certified capital.

4 (3) Makes qualified investments as its primary business
5 activity.

6 (d) “Certified investor” means any insurer subject to gross
7 premiums tax that contributes certified capital to a certified capital
8 company.

9 (e) “Department” means the Department of Financial
10 Institutions.

11 (f) “Financial institution” means a national banking
12 association, a federal savings association, or a commercial bank,
13 trust company, savings association, industrial loan company, or
14 credit union, incorporated in this state, another state, or a foreign
15 country.

16 (g) “Gross premiums tax” means the tax imposed upon an
17 insurer under Part 7 (commencing with Section 12001) of Division
18 2 of the Revenue and Taxation Code.

19 (h) “Principal” means an executive officer of a corporation,
20 partner of a partnership, manager of a limited liability company,
21 or any other person with equivalent executive functions.

22 (i) “Qualified business” means a business that meets all of the
23 following conditions:

24 (1) The business is headquartered in this state and its principal
25 business operations are located in a census tract in this state in
26 which the percentage of persons living below the federal poverty
27 level exceeds 25 percent, as determined by the California Research
28 Bureau.

29 (2) At the time a certified capital company makes an initial
30 investment in the business, the business is a small business as
31 defined in Section 14837 of the Government Code.

32 (3) At the time a certified capital company makes an initial
33 investment in the business, the business certifies in an affidavit
34 that:

35 (A) The business is unable to obtain conventional financing,
36 which means that the business has failed to obtain funding for a
37 loan from a bank or other commercial lender, or that the business
38 cannot reasonably be expected to qualify for financing under the
39 standards of commercial lending.



1 (B) The business plan for the business projects that the business
2 is reasonably expected to achieve in excess of twenty-five million
3 dollars (\$25,000,000) in sales revenue within five years of the
4 initial investment.

5 (C) The business will maintain its headquarters in this state for
6 the next 10 years and any new manufacturing facility financed by
7 a qualified investment will remain in this state for the next 10
8 years.

9 (D) The business has 100 or fewer employees and at least 75
10 percent of the employees are employed in this state.

11 A business predominantly engaged in retail sales, real estate
12 development, insurance, banking, lending, oil and gas
13 exploration, or professional services provided by accountants,
14 lawyers, or physicians does not constitute a qualified business.

15 (j) “Qualified debt instrument” means a debt instrument, or a
16 hybrid of a debt instrument, issued by a certified capital company,
17 at par value or a premium, with an original maturity date of at least
18 five years after the date of issuance, a repayment schedule that is
19 no more accelerated than a level principal amortization over a
20 five-year period, and interest, distribution, or payment features
21 that are not related to the profitability of the certified capital
22 company or the performance of the certified capital company’s
23 investment portfolio within the first five years of organization.

24 (k) “Qualified distribution” means any distribution or
25 payment to equity holders of a certified capital company for:

26 (1) Costs and expenses of forming, syndicating, managing,
27 credit enhancing (financial guarantee or insurance), and operating
28 the certified capital company, including an annual management
29 fee in an amount that does not exceed 2.5 percent of the certified
30 capital of the certified capital company, plus reasonable and
31 necessary fees in accordance with industry custom for professional
32 services, including, but not limited to, legal and accounting
33 services related to the operation of a certified capital company.

34 (2) Any projected increase in federal or state taxes, including
35 penalties and interest related to those state and federal taxes, of the
36 equity owners of a certified capital company resulting from the
37 earnings or other tax liability of the certified capital company to
38 the extent that the increase is related to the ownership,
39 management, or operation of a certified capital company.

(l) “Qualified investment” means the investment of cash by a certified capital company in a qualified business for the purchase of any debt, equity, or hybrid security of any nature and description whatsoever, including a debt instrument or security that has the characteristics of debt but that provides for conversion into equity or equity participation instruments, such as options or warrants.

(m) “Treasurer” means the Treasurer of the State of California.

(n) “Verified” means that the statements contained in a document are declared to be true based on the personal knowledge of the person executing the document in either:

(1) An affidavit signed by the person under oath before an officer authorized by the laws of this state or the place where it is executed to administer oaths.

(2) A declaration in writing executed by the person “under penalty of perjury” and stating the date and place, whether within or without the state, of execution.

1118. (a) To operate as a certified capital company, a corporation, partnership, or limited liability company shall receive certification from the Treasurer upon approval of an application. An approved applicant shall thereafter be regulated on an ongoing basis by the department.

(b) An applicant for certification as a certified capital company shall file a verified application with the Treasurer in a form that the Treasurer may prescribe by rule or regulation. The applicant shall submit a nonrefundable application fee of seven thousand five hundred dollars (\$7,500) to the Treasurer. In the application, the applicant shall provide the following information:

(1) The name of the applicant and the address of its principal office and each office in this state.

(2) The applicant’s form and place of organization and the relevant organizational documents, bylaws, and amendments or restatements of those documents, bylaws, or amendments.

(3) The applicant’s proposed method of doing business.

(4) The applicant’s financial condition and history, including an audit report of its financial statements prepared in accordance with generally accepted accounting principles showing net capital of not less than five hundred thousand dollars (\$500,000) within 90 days after the date the application is submitted to the Treasurer. If the date of the application is more than 90 days after preparation

of the applicant's fiscal yearend financial statements, the applicant may file financial statements reviewed by an independent certified public accountant for the period subsequent to the audit report, together with the audited financial statement for the most recent fiscal year. If the applicant has been in business less than 12 months, and has not prepared an audited financial statement, the applicant may file a financial statement reviewed by an independent certified public accountant.

(c) Applications shall be submitted to the Treasurer during the period from January 1, 2002, to February 15, 2002, inclusive. The Treasurer shall grant or deny an applicant's certification as a certified capital company by February 28, 2002. If the Treasurer grants certification, the Treasurer shall send a copy of the certification to the applicant and shall maintain a copy in its files. If the Treasurer denies certification, the Treasurer shall inform the applicant of the grounds for the denial by February 28, 2002, and the applicant shall have 15 days, until March 15, 2002, to have the Treasurer's decision reviewed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. If the Treasurer has not granted or denied certification within the time specified, the application shall be deemed approved. The Treasurer shall approve an application for certification as a certified capital company if the Treasurer finds that:

(1) The applicant satisfies the requirements of subdivision (b).

(2) At least two of the principals have a minimum of five years' experience making venture capital investments out of private equity funds, with not less than twenty million dollars (\$20,000,000) being provided by third-party investors for investment in the early stage of operating businesses. At least one full-time manager or principal of the certified capital company who has that experience shall be primarily located in an office of the certified capital company based in this state.

(d) The Treasurer may deny certification to, or the department may decertify, a certified capital company, if the grounds for the denial of certification or decertification are not removed or corrected within 90 days after the notice of those grounds is sent to the certified capital company. The Treasurer may deny certification to, or the department may decertify, a certified capital company if the certified capital company fails to maintain a net

1 worth of at least five hundred thousand dollars (\$500,000) at the
2 time of funding, or if the Treasurer determines that the applicant,
3 or the department determines that the certified capital company, or
4 any principal or director of the certified capital company, has:

5 (1) Violated any provision of this article.

6 (2) Made a material misrepresentation or false statement, or
7 concealed any essential or material fact from any person involved
8 in the application process, or with respect to information and
9 reports required of certified capital companies under this article.

10 (3) Been convicted of, or entered a plea of guilty or nolo
11 contendere to, a crime against the laws of this state or any other
12 state or of the United States or any country or government,
13 including a fraudulent act in connection with the operation of a
14 certified capital company, or in connection with the performance
15 of fiduciary duties in another capacity.

16 (4) Been adjudicated liable in a civil action on grounds of fraud,
17 embezzlement, misrepresentation, or deceit.

18 (5) (A) Been the subject of any decision, finding, injunction,
19 suspension, prohibition, revocation, denial, judgment, or
20 administrative order by any court of competent jurisdiction,
21 administrative law judge, or any state or federal agency, national
22 securities, commodities, or option association, involving a
23 material violation of any federal or state securities or commodities
24 law or any rule or regulation adopted under either law, or any rule
25 or regulation of any national securities, commodities, or options
26 exchange, or national securities, commodities, or options
27 association.

28 (B) Been the subject of any injunction or adverse
29 administrative order by a state or federal agency regulating
30 banking, insurance, finance or small loan companies, real estate,
31 mortgage brokers, or other related or similar industries.

32 (e) The Treasurer and the department shall administer and
33 provide for the enforcement of certification requirements for
34 certified capital companies as provided in this article. The
35 Treasurer and the department may adopt any rules or regulations
36 necessary to carry out their respective duties, obligations, and
37 powers related to certification, renewal of certification, or
38 decertification of certified capital companies and may perform any
39 other acts necessary for the proper administration and enforcement
40 of those duties, obligations, and powers.



(f) Decertification of a certified capital company under this section does not affect the ability of certified investors in that certified capital company to claim future gross premiums tax credits pursuant to Section 1120, that are earned as a result of an investment in the certified capital company during the period in which it was duly certified.

1119. (a) To remain certified, a certified capital company shall make qualified investments according to the following schedule:

(1) At least 20 percent of its certified capital shall be invested in qualified investments by June 15, 2005.

(2) At least 30 percent of its certified capital shall be invested in qualified investments by June 15, 2006.

(3) At least 40 percent of its certified capital shall be invested in qualified investments by June 15, 2007.

(4) At least 50 percent of its certified capital shall be invested in qualified investments by June 15, 2008. At least 50 percent of those qualified investments shall be invested in early stage technology businesses.

(b) All capital not invested in qualified investments by the certified capital company:

(1) Shall be held in a financial institution as defined by Section 1117 or held by a broker-dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78(a) et seq.).

(2) Shall be invested only in:

(A) United States Treasury obligations.

(B) Certificates of deposit or other obligations, maturing within three years after acquisition of those certificates or obligations, issued by any financial institution or trust company incorporated under the laws of the United States.

(C) Marketable obligations, maturing within five years or less after the acquisition of those obligations, that are rated “A” or better by any nationally recognized credit rating agency.

(D) Mortgage-backed securities, with an average life of five years or less after the acquisition of those securities, that are rated “A” or better by any nationally recognized credit rating agency.

(E) Collateralized mortgage obligations and real estate mortgage investment conduits that are direct obligations of an agency of the United States government; are not private-label

1 issues; are in book-entry form; and do not include the classes of
2 interest only, principal only, residual, or zero.

3 (F) Interests in money market funds, the portfolio of which is
4 limited to cash and obligations authorized by this subdivision.

5 (c) The aggregate amount of all qualified investments made by
6 the certified capital company from the date of its certification shall
7 be considered in the calculation of the percentage requirements
8 under subdivision (a).

9 1120. Any certified investor who makes an investment of
10 certified capital in a certified capital company shall be entitled to
11 claim a credit against its gross premiums tax as provided for in
12 Section 12208 of the Revenue and Taxation Code.

13 1121. (a) On an annual basis, on or before December 31, each
14 certified capital company shall file with the Treasurer, a form
15 prescribed by the Treasurer for each calendar year with the
16 following information:

17 (1) The total dollar amount the certified capital company
18 received from certified investors, the identity of the certified
19 investors, and the amount received from each certified investor
20 during the calendar year.

21 (2) The total dollar amount the certified capital company
22 invested and the amount invested in qualified businesses, together
23 with the identity and location of those businesses and the amount
24 invested in each qualified business.

25 (3) For informational purposes only, the total number of
26 permanent, full-time jobs either created or retained by the
27 qualified business during the calendar year, the average wage of
28 the jobs created or retained, the industry sectors in which the
29 qualified businesses operate, and any additional capital invested in
30 qualified businesses from sources other than certified capital
31 companies.

32 (b) The form shall be verified by one or more principals of the
33 certified capital company submitting the form in accordance with
34 subdivision (n) of Section 1117.

35 (c) The department and the Treasurer shall review the forms
36 and any supplemental documentation submitted by each certified
37 capital company to confirm:

38 (1) That the businesses in which certified capital has been
39 invested by the certified capital company are in fact qualified



1 businesses, and that the amount of certified capital invested by the
2 certified capital company is as represented in the form.

3 (2) The amount of certified capital invested in the certified
4 capital company by its certified investors.

5 (3) The amount of gross premiums tax credit available to its
6 certified investors.

7 (d) Upon making a determination that the certified capital
8 company has complied with the requirements for maintaining its
9 certification as set forth in this section and Section 1119, the
10 Treasurer shall send a Declaration of Continued Compliance to the
11 certified capital company.

12 (e) On or before February 15 of each year, upon receipt of a
13 Declaration of Continued Compliance pursuant to subdivision (d),
14 each certified capital company shall pay to the Treasurer an
15 annual, nonrefundable renewal certification fee of five thousand
16 dollars (\$5,000). No renewal fees shall be required within six
17 months after the date of initial certification.

18 (f) The department is authorized to audit and examine the
19 accounts, books, or records of certified capital companies and
20 certified investors for the purpose of ascertaining the correctness
21 of any report and financial return that has been filed, and to
22 ascertain a certified capital company's compliance with the
23 tax-related provisions of this act.

24 1122. Any offering material relating to the sale of securities
25 of the certified capital company shall include the following
26 statement: "By authorizing the formation of a certified capital
27 company, the State of California does not endorse the quality of
28 management or the potential for earnings of that company and is
29 not liable for damages or losses to a certified investor in the
30 company. Use of the word "certified" in an offering does not
31 constitute a recommendation or endorsement of the investment by
32 the State of California. Investments in a certified capital company
33 prior to the time that company is certified are not eligible for gross
34 premiums tax credits. If applicable provisions of law are violated,
35 the state may require the forfeiture of unused gross premiums tax
36 credits and the repayment of used gross premiums tax credits by
37 the certified investor."

38 1123. No insurer or any affiliate of an insurer shall, directly
39 or indirectly, manage or control the direction of investments of a
40 certified capital company. This prohibition does not preclude a



1 certified investor, insurer, or any other party from exercising its
2 legal rights and remedies, which may include interim management
3 of a certified capital company, if a certified capital company is in
4 default of its obligations under law or its contractual obligations
5 to that certified investor, insurer, or other party.

6 1124. (a) A certified capital company may make qualified
7 distributions at any time. In order to make a distribution to its
8 equity holders, other than a qualified distribution, a certified
9 capital company shall have invested an amount cumulatively equal
10 to 100 percent of its certified capital in qualified investments.
11 Payments to debtholders of a certified capital company, however,
12 may be made without restriction with respect to repayments of
13 principal and interest on indebtedness owed to them by a certified
14 capital company, including indebtedness of the certified capital
15 company on which certified investors earned gross premiums tax
16 credits. A debtholder that is also a certified investor or equity
17 holder of a certified capital company may receive payments with
18 respect to that debt without restrictions.

19 (b) Cumulative distributions from a certified capital company
20 to its certified investors and equity holders, other than qualified
21 distributions, in excess of the certified capital company's original
22 certified capital, and any additional capital contributions to the
23 certified capital company may be audited by a nationally
24 recognized certified public accounting firm acceptable to the
25 department, at the expense of the certified capital company, if the
26 department directs that the audit be conducted. The audit shall
27 determine whether aggregate cumulative distributions from the
28 certified capital company to all certified investors and equity
29 holders, other than qualified distributions, have equaled the sum
30 of the certified capital company's original certified capital and any
31 additional capital contributions to the certified capital company.
32 If, at the time of that distribution by the certified capital company,
33 the distribution taken together with all other similar distributions
34 made by the certified capital company, other than qualified
35 distributions, exceeds in the aggregate the sum of the certified
36 capital company's original certified capital and any additional
37 capital contributions to the certified capital company, as
38 determined by the audit, the certified capital company shall pay to
39 the Treasurer 10 percent of the portion of that distribution in excess
40 of that amount. Payments to the Treasurer by a certified capital



1 company pursuant to this section shall not exceed the aggregate
2 amount of tax credits used by all certified investors in that certified
3 capital company.

4 1125. (a) The department shall conduct an annual review of
5 each certified capital company to determine whether the certified
6 capital company is abiding by the requirements of certification, to
7 advise the certified capital company as to the eligibility status of
8 its qualified investments, and to ensure that no investment has been
9 made in violation of this act. The cost of the annual review shall
10 be paid by each certified capital company.

11 (b) Nothing contained in this section shall be construed to limit
12 the department's authority to conduct audits of certified capital
13 companies as deemed appropriate and necessary.

14 (c) Any material violation of this article, or a finding that the
15 certified capital company or any principal or director thereof has
16 committed any act specified in subdivision (d) of Section 1118,
17 shall be grounds for decertification of the certified capital
18 company. If the department determines that a certified capital
19 company is no longer in compliance with the certification
20 requirements of this act, the department shall, by written notice,
21 inform the officers of that company that the company may be
22 subject to decertification 90 days after the date of mailing of the
23 notice, unless the deficiencies are corrected and that company is
24 again found to be in compliance with all certification
25 requirements.

26 (d) At the end of the 90-day grace period, if the certified capital
27 company is still not in compliance with the certification
28 requirements, the department may issue a notice to revoke or
29 suspend the certification or to impose an administrative fine. The
30 department shall advise the company of its right to an
31 administrative hearing under Chapter 5 (commencing with
32 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
33 Code prior to final action by the department.

34 (e) If the department revokes a certification, that revocation
35 shall also deny, suspend, or revoke the certifications of all affiliates
36 of the certified capital company.

37 (f) If the department revokes a certified capital company's
38 certification, it shall inform all the certified investors of that
39 company of its action.

(g) A certified capital company's failure to meet all requirements for continued certification under subdivision (a) of Section 1119 shall cause the recapture of gross premiums tax credits previously claimed by its certified investors and the forfeiture of future gross premiums tax credits to be claimed by its certified investors with respect to that certified capital company, as follows:

(1) Decertification of a certified capital company within three years after its initial certification date shall cause the recapture of all gross premiums tax credits previously claimed by its certified investors and the forfeiture of all future gross premiums tax credits to be claimed by those certified investors with respect to that certified capital company.

(2) When a certified capital company meets all requirements for continued certification under paragraph (1) of subdivision (a) of Section 1119 and subsequently fails to meet the requirements for continued certification under paragraph (2) of subdivision (a) of Section 1119, gross premiums tax credits that have been or will be taken by its certified investors within three years after the initial certification date of the certified capital company shall not be subject to recapture or forfeiture; however, all gross premiums tax credits that have been or will be taken by its certified investors after the third anniversary of the initial certification date of the certified capital company shall be subject to recapture or forfeiture.

(3) When a certified capital company meets all requirements for continued certification under paragraphs (1) and (2) of subdivision (a) of Section 1119 and subsequently fails to meet the requirements for continued certification under paragraph (3) of subdivision (a) of Section 1119, the gross premiums tax credits that have been or will be taken by its certified investors within four years after the initial certification date of the certified capital company shall not be subject to recapture or forfeiture; however, all gross premiums tax credits that have been or will be taken by its certified investors after the fourth anniversary of the initial certification date of the certified capital company shall be subject to recapture and forfeiture.

(4) If a certified capital company has met all requirements for continued certification under subdivision (a) of Section 1119, but that company is subsequently decertified pursuant to any other applicable provisions of this article, the gross premiums tax credits

1 that have been or will be taken by certified investors within five
2 years after the initial certification date of that company shall not
3 be subject to recapture or forfeiture. The gross premiums tax
4 credits to be taken by its certified investors subsequent to the fifth
5 year of certification shall be subject to forfeiture only if the
6 certified capital company is decertified within five years after its
7 initial certification date.

8 (5) If a certified capital company has invested an amount
9 cumulatively equal to 100 percent of its certified capital in
10 qualified investments, all gross premiums tax credits claimed or to
11 be claimed by its certified investors shall not be subject to
12 recapture or forfeiture.

13 (h) Decertification of a certified capital company pursuant to
14 Section 1118 does not affect the ability of certified investors in that
15 certified capital company to continue to claim future gross
16 premiums tax credits earned as the result of an investment in the
17 certified capital company during the period in which it was duly
18 certified.

19 (i) The commissioner shall send a written notice to the address
20 of each certified investor whose gross premiums tax credits are
21 subject to recapture or forfeiture, using the address last shown on
22 the last gross premiums tax return. The notice shall indicate the
23 amount of credit subject to recapture and the amount of credit
24 subject to forfeiture. A copy of the notice, with the commissioner's
25 proposal for a deficiency assessment, shall be sent by the
26 department to the State Board of Equalization.

27 1126. On or before April 1 of each year, the department and
28 the Treasurer shall report to the Governor, the Senate Committee
29 on Rules, and the Speaker of the Assembly the following
30 information:

31 (a) The total dollar amount each certified capital company
32 received from all certified investors and any other investor, the
33 identity of the certified investors, and the total amount of gross
34 premiums tax credit used by each certified investor for the
35 previous calendar year.

36 (b) The total dollar amount invested by each certified capital
37 company and that portion invested in qualified businesses, the
38 identity and location of those businesses, the amount invested in
39 each qualified business, and the total number of permanent,
40 full-time jobs created or retained by each qualified business.

1 (c) The return for the state as a result of the certified capital
2 company investments, including the extent to which:

3 (1) Certified capital company investments have contributed to
4 employment growth.

5 (2) The wage levels of businesses in which certified capital
6 companies have invested exceed the average wage for the county
7 in which the jobs are located.

8 (3) The investments of the certified capital companies in
9 qualified businesses have contributed to expanding or diversifying
10 the economic base of the state.

11 1127. All fees and charges of any nature collected by the
12 Treasurer pursuant to this article shall be paid into the State
13 Treasury and credited to the General Fund.

14 1128. (a) The department may prescribe forms and
15 procedures for the claiming of tax credits and for the recapture and
16 forfeiture of tax credits as authorized by this article.

17 (b) The department may adopt any regulations that are
18 necessary for it to carry out its duties, obligations, and powers
19 related to the administration, review, and reporting provisions of
20 this article, and it may perform any other acts that are necessary for
21 the proper administration and enforcement of the provisions of this
22 article.

23 1129. The Treasurer's office shall establish guidelines for
24 directing investments in underserved communities and markets.

25 1130. This article shall remain in effect only until January 1,
26 2013, and on that date is repealed, unless a later enacted statute that
27 is enacted before January 1, 2013, deletes or extends that date.

28 SEC. 3. Section 12211 is added to the Revenue and Taxation
29 Code, to read:

30 12211. (a) (1) There shall be allowed as a credit against the
31 "tax" (as described in Section 12201) a tax credit in an amount
32 equal to the amount determined in paragraph (2).

33 (2) The amount of the credit is 100 percent of the amount of
34 certified capital contributed by a certified investor to a certified
35 capital company, not to exceed the credit amount of two million
36 dollars (\$2,000,000) for each certified investor or its affiliates in
37 any year, and not to exceed fifty million dollars (\$50,000,000) in
38 the aggregate for all certified investors or their affiliates in any
39 year.

40 (b) For the purposes of this section:

1 (1) “Certified capital” means an investment of cash by a
2 certified investor in a certified capital company that fully funds the
3 purchase price of either or both its equity interest in, or a qualified
4 debt instrument issued by, the certified capital company.

5 (2) “Certified capital company” means a corporation,
6 partnership, or limited liability company that:

7 (A) Is certified by the Treasurer and regulated by the
8 Department of Financial Institutions in accordance with Article 19
9 (commencing with Section 1115) of Chapter 1 of Part 2 of Division
10 1 of the Insurance Code.

11 (B) Receives investments of certified capital.

12 (C) Makes qualified investments as its primary business
13 activity.

14 (3) “Certified investor” means any insurer subject to gross
15 premiums tax that contributes certified capital to a certified capital
16 company.

17 (4) “Qualified business” means a business that meets all of the
18 following conditions:

19 (A) The business is headquartered in this state and its principal
20 business operations are located in a census tract in this state in
21 which the percentage of persons living below the federal poverty
22 level exceeds 25 percent, as determined by the California Research
23 Bureau.

24 (B) At the time a certified capital company makes an initial
25 investment in the business, the business is a small business as
26 defined in Section 14837 of the Government Code.

27 (C) At the time a certified capital company makes an initial
28 investment in the business, the business certifies in an affidavit
29 that:

30 (i) The business is unable to obtain conventional financing,
31 which means that the business has failed to obtain funding for a
32 loan from a bank or other commercial lender, or that the business
33 cannot reasonably be expected to qualify for financing under the
34 standards of commercial lending.

35 (ii) The business plan for the business projects that the business
36 is reasonably expected to achieve in excess of twenty-five million
37 dollars (\$25,000,000) in sales revenue within five years of the
38 initial investment.

39 (iii) The business will maintain its headquarters in this state for
40 the next 10 years and any new manufacturing facility financed by

1 a qualified investment will remain in this state for the next 10
2 years.

3 (iv) The business has 100 or fewer employees and at least 75
4 percent of the employees are employed in this state.

5 A business predominantly engaged in retail sales, real estate
6 development, insurance, banking, lending, oil and gas
7 exploration, or professional services provided by accountants,
8 lawyers, or physicians does not constitute a qualified business.

9 (5) “Qualified investment” means the investment of cash by a
10 certified capital company in a qualified business for the purchase
11 of any debt, equity, or hybrid security of any nature and description
12 whatsoever, including a debt instrument or security that has the
13 characteristics of debt but that provides for conversion into equity
14 or equity participation instruments, such as options or warrants.

15 (6) “Treasurer” means the Treasurer of the State of California.

16 (c) (1) The amount of the credit allocated to a certified investor
17 shall be determined by the Treasurer, based on the joint application
18 of the certified investor and the certified capital company to the
19 Treasurer, in accordance with the requirements of Section 1121 of
20 the Insurance Code.

21 (2) (A) The Treasurer shall certify to the certified investor the
22 amount of tax credit under this section allocated to the certified
23 investor.

24 (B) The certified investor shall attach a copy of the certification
25 to any return upon which a tax credit is claimed under this section.

26 (C) In the case of a failure to attach to a return a copy of the
27 certification for any year in which a tax credit is claimed under this
28 section, no credit under this section shall be allowed for that year
29 until a copy of that certification is provided.

30 (d) A certified investor claiming a credit under this section
31 shall not be required to pay an additional retaliatory tax levied
32 pursuant to Section 12281 as a result of claiming the credit.

33 (e) The total amount of tax credits that may be allocated by the
34 Treasurer shall not exceed five hundred million dollars
35 (\$500,000,000) in the aggregate for all certified investors during
36 the entire period that the tax credits may be claimed.

37 (f) The Treasurer shall be responsible for allocating gross
38 premiums tax credits to certified capital companies.

39 (g) Each certified capital company shall apply to the Treasurer
40 jointly with its potential certified investors by May 15, 2002, for

1 an allocation of gross premiums tax credits, on a form developed
2 by the Treasurer, with the cooperation of the Department of
3 Financial Institutions. The form shall be accompanied by an
4 affidavit from each potential certified investor confirming that the
5 potential certified investor has agreed to make an investment of
6 certified capital in the certified capital company up to a specified
7 amount, subject only to the receipt of a gross premiums tax credit
8 allocation pursuant to this section. No allocation shall be made to
9 the potential certified investors of a certified capital company
10 unless that certified capital company has applied for a gross
11 premiums tax credit allocation that would result in an allocation
12 to its potential certified investors of not less than seventy-five
13 million dollars (\$75,000,000) in the aggregate or 15 percent of the
14 total amount of tax credits available to the certified capital
15 company.

16 (h) On or before June 1, 2002, the Treasurer shall inform each
17 certified capital company of its share of total gross premiums tax
18 credits available for allocation to each of its potential certified
19 investors.

20 (i) If a certified capital company does not receive certified
21 capital from a certified investor equal to the amount of the gross
22 premiums tax credit allocated to that certified investor within 10
23 business days after the certified investor received a notice of
24 allocation, the certified capital company shall notify the Treasurer
25 by overnight common carrier delivery service of the company's
26 failure to receive the capital. That portion of the gross premiums
27 tax credits allocated to the certified capital company shall be
28 forfeited. If the Treasurer makes a pro rata allocation under
29 subdivision (f), the Treasurer shall reallocate those available
30 credits among the other certified capital companies on the same
31 pro rata basis as the initial allocation.

32 (j) If the total amount of capital committed by all certified
33 investors to certified capital companies in gross premiums tax
34 allocation claims exceeds the aggregate cap on the amount of
35 credits that may be awarded, the gross premiums tax credits that
36 may be allowed to any one certified investor shall be allocated
37 using the following ratio:
38

$$A/\$500,000,000 = X$$

Where the letter “A” represents the total amount of certified capital that all certified investors have agreed to invest in all certified capital companies, and five hundred million dollars (\$500,000,000) is the denominator and represents the total amount of gross premiums tax credits and certified capital that may be allocated to all certified investors in calendar years 2002 to 2012, inclusive, not to exceed 10 percent in any one calendar year. X is the factor that, if it is less than one, each certified investor and certified capital company shall receive 100 percent of its applied-for tax credits, subject to the requirements of this section. The Treasurer shall have the authority to reallocate any unapplied-for tax credits. If X is greater than one, any joint application of a certified investor and a certified capital company shall have its application request reduced by the reciprocal of X (1/X). This rule shall apply to each and every application submitted to the Treasurer. The gross premiums tax credits are not first available for utilization until annual returns are filed on April 1, 2003, for calendar year 2002, and the tax credits may be used at a rate not to exceed 10 percent annually.

(k) A certified capital investor may sell a credit to another certified capital investor that is subject to taxation under this part if the certified capital investor notifies the Treasurer of the sale and includes with that notification a copy of the transfer documents.

(l) If the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the next year, and in succeeding years if necessary, until the credit is exhausted.

(m) For purposes of determining any tax that may be imposed under Section 685 of the Insurance Code on a taxpayer not organized under the laws of this state, the amount of the credit allowed by this section shall be treated as a tax paid under Section 12201 or Section 28 of Article XIII of the California Constitution.

(n) This section shall remain in effect only until January 1, 2013, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 2013, deletes or extends that date.

SEC. 4. Section 12422.1 is added to the Revenue and Taxation Code, to read:

12422.1. (a) If the commissioner decertifies a certified capital company pursuant to Section 1125 of the Insurance Code,

he or she shall propose in writing to the board a deficiency assessment for each certified investor whose gross premiums tax credits are subject to recapture or forfeiture. The proposal shall set forth the basis for the deficiency assessment and the details of the computation.

(b) This section shall remain in effect only until January 1, 2013, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 2013, deletes or extends that date.

SEC. 5. Section 12428.1 is added to the Revenue and Taxation Code, to read:

12428.1. (a) The deficiency assessment made under Section 12422.1 shall become final and due and payable 90 days after service upon the insurer of the notice of deficiency assessment.

(b) This section shall remain in effect only until January 1, 2013, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 2013, deletes or extends that date.

SEC. 6. Section 12632.1 is added to the Revenue and Taxation Code, to read:

12632.1. (a) Any certified investor who fails to pay a deficiency assessment due as a result of the recapture of any portion of its gross premiums tax credit authorized by Section 12211 when it becomes due and payable shall pay a penalty of 10 percent of the amount of the deficiency assessment, exclusive of penalties.

(b) When any certified investor fails to pay any amount due as a result of the recapture of any portion of its gross premiums tax credit authorized by Section 12211 on or before the due date specified in this section, that amount shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the amount, or any portion thereof, would have been payable if properly reported and assessed, until the date of payment.

(c) This section shall remain in effect only until January 1, 2013, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 2013, deletes or extends that date.